

SECOND DIVISION

[G.R. Nos. 118986-89, February 19, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERNANI DICHOSON, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court, Branch 25, Iloilo City, finding accused-appellant Hernani Dichoson guilty of one count of acts of lasciviousness and three counts of rape and sentencing him accordingly.

The information^[2] for acts of lasciviousness alleged—

That [o]n or about the month of October 1981, in the Municipality of Dumangas, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused did then and there wilfully, unlawfully and feloniously commit an act of lasciviousness upon the person of the undersigned, a minor, by then and there kissing, fondling her breast, touching her vagina and ordering her to hold his penis, against the latter's will and by means of force and intimidation.^[3]

Except as to the dates appearing therein, the three informations^[4] for rape commonly alleged ³/₄

That on or about [date]^[5] in the Municipality of Dumangas, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned against her will and consent.^[6]

Upon arraignment, accused-appellant pleaded not guilty to the charges, whereupon the cases were jointly tried.

The prosecution presented evidence showing the following:

Complainant Lelanie Dusan, born on September 22, 1970, is the seventh of the nine children of Arnulfo Dusan and Concepcion Nene of Bolilao, Dumangas, Iloilo. Accused-appellant's wife, Roces Dichoson, is a first cousin of complainant's parents. In 1979, when complainant was only nine years old, Roces Dichoson asked complainant's parents to let her (complainant) live with her (Dichoson's) family to look after the children. Complainant's parents agreed, and so complainant moved in the Dichoson household in Barangay Bolilao.^[7]

According to complainant, one evening in October 1981, at around 8 o'clock in the

evening, while she was sleeping in a playpen in the bedroom, accused-appellant, who also slept in the same bedroom with his wife and children, took her hand and placed it on his sex organ. Complainant was awakened and, frightened, she drew back her hand. She said accused-appellant did not say anything.

Complainant said she was again molested by accused-appellant the following evening. Accused-appellant made complainant hold his genitals and fondled her breasts and private parts. Similar incidents took place that month (October 1981) although complainant could no longer recall the exact date of their commission. Complainant stated that she did not report these incidents to her parents because at first she thought accused-appellant had lost his mind and later because she did not want to bring shame to her family.^[8]

On May 4, 1982, accused-appellant's sister came for a visit. Complainant had to sleep in the living room so that accused-appellant's sister could sleep in the room previously occupied by her. Complainant said that while the rest of the household was asleep, accused-appellant went over to her, dragged her towards the kitchen, and there forced her to have sexual intercourse with him. Complainant said she tried to fight accused-appellant's advances but she was overpowered. She was afraid because she knew that, aside from the knives in the kitchen which accused-appellant might use to harm her, he placed a revolver in one of the kitchen cabinets.^[9]

In the evening of June 16, 1982, complainant was again sexually abused by accused-appellant. While complainant was asleep, accused-appellant entered complainant's room, lowered her undergarments down to her knees, and had sexual intercourse with her. After he was through, he left without a word.^[10]

The third rape incident, which is subject of Criminal Case No. 16250, took place in the morning of July 12, 1982. Complainant testified that while she was in her room, accused-appellant came and had sexual intercourse with her.^[11]

According to complainant, after the rape incident of July 12, 1982, accused-appellant continued to rape her on subsequent occasions so numerous that she could no longer recall the dates when each incident took place. When asked during the cross-examination why she did not report the rapes to anyone, she replied that she did not want to put her family to shame.^[12]

In May 1983, complainant's parents noticed that complainant had stopped having her menstruation and her abdomen had become distended. They decided to take her to a "healer" but, upon accused-appellant's instruction, complainant told her parents that she had been raped by a certain Tony Lopez. Her parents, therefore, decided that complainant should be brought to Zamboanga.^[13]

But complainant's father doubted his daughter's account because the boy she had implicated was a mental retardate. While he and his daughter were on their way to Zamboanga, he decided to drop by his brother's house in La Paz, Iloilo, where, upon the prodding of her cousins, complainant revealed that it was actually accused-appellant who had repeatedly raped her, causing her to become pregnant.^[14]

Complainant was then examined at the Iloilo provincial hospital and later at the

office of the National Bureau of Investigation. On May 24, 1983, she executed her affidavit-complaint before Assistant Provincial Prosecutor Romeo H. Mediodia of Iloilo. On July 9, 1983, complainant gave birth to a baby girl at the Iloilo provincial hospital. These cases were subsequently filed on August 4, 1983.^[15]

Complainant's mother, Concepcion Dusan, was to testify as to complainant's date of birth. However, as the defense agreed that complainant's date of birth was that stated in her birth certificate^[16] (September 22, 1970), the mother's testimony was dispensed with.^[17]

The defense then presented its case. Accused-appellant, 40, denied the allegations against him. He named Tony Lopez as the guilty party. He testified that in February 1982, he allegedly hired Lopez to tend to his piggery. Lopez, who was allegedly good-looking and single, worked for accused-appellant until December 1982 during which Lopez stayed in the latter's house. Accused-appellant claimed that many times he observed Lopez and complainant sitting beside each other and being "sweet to each other." On one occasion, he said he came upon Lopez and complainant sleeping in the same room with his children.^[18]

Accused-appellant testified that Lopez expressed willingness to marry complainant upon learning of the birth of complainant's child.^[19]

Accused-appellant's defense was alibi. He claimed that he was not at home from 9 o'clock in the evening of May 4, 1982 to 6 o'clock in the morning of the following day, May 5, 1982. He said that he was in the cockpit in Dumangas in the morning on May 4, 1982. Afterwards, he went with some friends to the town plaza, going home only at 6 o'clock in the morning of the next day, May 5, 1982. At around 12 noon that day, he allegedly went back to Dumangas for the fiesta celebration.^[20]

As for his whereabouts on June 16, 1982, accused-appellant testified that from 8 o'clock in the morning to 6 o'clock in the evening of that day, he was in Barangay Barotac to watch a cockfight. He was allegedly not home either from 4 o'clock in the morning to 10 o'clock in the evening of July 12, 1982 as he had allegedly had gone to other barangays to purchase palay for his business. Upon being questioned by the court, however, he could not recall where he had gone to buy palay that day.^[21]

Accused-appellant claimed that complainant's father harbored ill feelings towards him because their business venture of buying and selling palay failed.^[22] He testified that the day before he was arrested, when he learned that some policemen were looking for him, he immediately went to see his cousin, Sulpicio Diaz, a member of the Sangguniang Bayan of Dumangas, in order to surrender to the authorities. But his cousin told him to go home while he (Diaz) arranged for his bailbond. The following day, the policemen came back and arrested him. He was provisionally released after he posted bail.^[23]

Pepito Dumayas, a barriomate of accused-appellant, corroborated the latter's testimony regarding the identity of Tony Lopez and his (Lopez's) alleged stay in the house of accused-appellant. Dumayas admitted, however, that he could not recall the year when he first and last saw Lopez in accused-appellant's house.^[24]

On May 27, 1994, the trial court rendered judgment as follows:

Wherefore, in the light of the foregoing premises, there being proof beyond reasonable doubt that the accused committed the three counts of rape and an act of lasciviousness as charged in the [informations], accused Hernani Dichoson is hereby pronounced guilty thereof and is sentenced to suffer an indivisible penalty of Reclusion Perpetua in each of these three cases of rape and, as regards the charge of act of lasciviousness, he is also found guilty thereof and is sentenced to suffer an indeterminate penalty of imprisonment of from Six Months of Arresto Mayor, as minimum, to Two (2) Years, Two (2) Months and one (1) day of Prision Correccional, as maximum, and he is further ordered to give support to the child borne out of his liaison with the private complainant and as well as pay the costs.^[25]

Assailing the trial court's decision, accused-appellant alleges that—

- I. THE COURT IN THE LOWER LEVEL ERRED IN CONVICTING THE ACCUSED IN A JOINT JUDGMENT [FOR] THE CRIME OF RAPE IN CRIMINAL CASE NO[S]. 16250, 16251, AND 16252 AND CRIMINAL CASE NO. 16249 FOR ACTS OF LASCIVIOUSNESS, INSTEAD OF ACQUITTING HIM (ACCUSED) ON [THE] GROUND THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.
- II. THE LOWER COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF INSUFFICIENT AND DOUBTFUL EVIDENCE AND OVERLOOKED FACTS OF SUBSTANCE AND VALUE WHICH AFFECT[ED THE] THE RESULT[S] OF THE CASE.
- III. THE COURT A QUO ERRED AND FAILED TO TAKE COGNIZANCE OF THE FACT THAT THERE WAS DELAY IN THE FILING OF THE COMPLAINT WHICH RENDERS THE SAME DOUBTFUL.^[26]

First. Accused-appellant maintains that, as complainant herself said, the person who had raped her was Tony Lopez.^[27]

This is not correct. Complainant explained why in the beginning she implicated Lopez, thus:

- Q Can you please tell the Court the circumstances of the discovery of that pregnancy?
- A At first, I never thought I was pregnant.
- Q But later on?
- A Later on, my mother consulted my aunt why I was not menstruating anymore.
- Q And what happened when your aunt consulted ... rather, your mother consulted your aunt?
- A They said they would bring me to a healer to be cured. That afternoon I was to be brought to the healer, the accused told me to tell them that I became pregnant

because I was raped by a mentally retarded who was staying in their house by the name of Tony Lopez.

Q And were you brought to the healer that day?

A No, Sir.

Q Why?

A They found out I was really pregnant.

Q You mean to say, you told your parents you were pregnant?

A Yes, Sir.

Q And what did you tell your parents as to who made you pregnant?

A The same as what he told me.

Q Whom are you referring?

A That it was Tony Lopez.

Q When you said the same that "he" told me, you mean the accused as the person who told you to mention the name of Tony Lopez, the mental retardate?

A Yes, Sir. [28]

That complainant followed what she had been told to say by accused-appellant could be explained by the fact that accused-appellant exercised a strong moral dominance over her. It was only after her father had taken her to La Paz, away from the control of accused-appellant, that she found courage to tell the truth and pointed to accused-appellant as the culprit. Complainant vindicated herself during the trial of these cases. She unwaveringly declared that it was accused-appellant who had subjected her to a series of sexual abuse. She affirmed on the stand that what she had told her father and later the investigating prosecutor was the truth, thus:

Q And were they able to bring you to Zamboanga?

A No, Sir.

Q Why, what happened?

. . . .

A Instead of going to Zamboanga, he brought me to the house of my aunt in La Paz and there made me tell the truth.

Q And when you said "he" made me tell the truth, you are referring to your father?

A Yes, Sir.

Q And did you tell your father the truth?

A Yes, Sir.

Q Including that you were only told by the accused to implicate Tony Lopez, the mental retardate, as the person who impregnated you?